

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Mildred Mattson

NOTICE OF HEARING AND  
MOTION FOR RELIEF FROM  
AUTOMATIC STAY

Debtor

Chapter 7, Case No. 04-60919  
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TO: Mildred Mattson, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Wells Fargo Bank, N.A., ("Movant"), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 1:00 pm on October 26, 2004, in Courtroom 2, 118 South Mill Street, Fergus Falls, MN 56537 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 21, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 15, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on August 6, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtor, subject to a mortgage to Movant.

6. Debtor above-named is the owner of certain real property located at 1104 West Meadow Lane, Alexandria, MN 56308, legally described as follows, to-wit:

Lot 3, Block 2, Second Addition to Tabbert's Subdivision, Douglas County, Minnesota

7. The indebtedness of Mildred Mattson is evidenced by a Promissory Note and Mortgage dated April 7, 2003, filed of record in the Douglas County Recorder's office on April 11, 2003, and recorded as Document No. 238852. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtor has failed to pay monthly mortgage payments since July 1, 2004, and is in default in the amount of \$3,002.52 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtor has failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is \$84,352.88.

10. The Debtor has scheduled a second mortgage in favor of Bremer Bank in the amount of \$38,988.70. Upon information and belief, the principal balance of said mortgage is still in that amount.

11. The Debtor has estimated the value of the homestead as \$136,900.00, and accordingly, Debtor has limited equity in the premises and, presuming typical selling costs, has no equity in the property and therefore cause exists to find lack of adequate protection.

12. Upon information and belief, Debtor intends to permit the foreclosure sale of the real property and has no intention of reaffirmation of the debt.

13. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 29, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

IN RE:

Mildred A. Mattson

AFFIDAVIT OF PETITIONER

Debtor

Chapter 7, Case No. 0460919  
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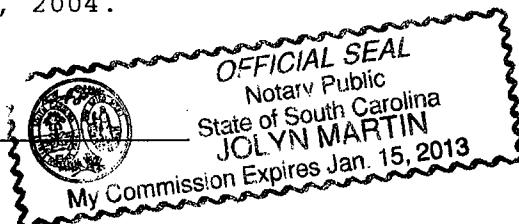
STATE OF GEORGIA

COUNTY OF FULTON

Sharon Brown, being first duly sworn, deposes and states she is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her knowledge to the best of her information.

Subscribed and sworn to before me this  
23 day of August, 2004.

J. Martin  
Notary Public



REGISTRATION TAX HEREON NO. 388916  
OF 189.64 DOLLARS  
HAS BEEN PAID  
April 11, 2003  
Deputy Auditor/Treasurer  
Douglas County, Minnesota

OFFICE OF COUNTY RECORDER } SS  
County of Douglas, Minn.

I hereby certify that the within instrument  
was filed in this office for record on the 11th  
day of April 20 03 at 9:00  
o'clock A M and was duly recorded as

Doc. No. 238852

Barbara Chermak Recorder  
Judith Ross Deputy

[Space Above This Line For Recording Data]

## MORTGAGE

Return To:  
WELLS FARGO HOME MORTGAGE, INC.  
3601 MINNESOTA DR. SUITE 200  
BLOOMINGTON, MN 55435

**NOTICE: THIS LOAN IS NOT ASSUMABLE  
WITHOUT THE APPROVAL OF THE DEPARTMENT  
OF VETERANS AFFAIRS OR ITS AUTHORIZED  
AGENT.**

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated APRIL 07, 2003 together with all Riders to this document.

0022696082

353560562928

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

VMP -SG(MN) 10005

Page 1 of 15

Initials: Mam

VMP MORTGAGE FORMS - (800)521-7291



TAP 25101

(B) "Borrower" is **MILDRED A MATTSON, A SINGLE PERSON**

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is **WELLS FARGO HOME MORTGAGE, INC.**

Lender is a **CORPORATION**

organized and existing under the laws of **THE STATE OF CALIFORNIA**

Lender's address is **P.O. BOX 10304, DES MOINES, IA 503060304**

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **APRIL 07, 2003**

The Note states that Borrower owes Lender **Eighty Two Thousand Four Hundred Fifty and 00/100** Dollars

(U.S. \$ \*\*\*\*\*82,450.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **MAY 01, 2033**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input checked="" type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

238852

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY DOUGLAS (Type of Recording Jurisdiction)

of DOUGLAS (Name of Recording Jurisdiction):  
LOT 3, BLOCK 2, SECOND ADDITION TO TABBERT'S SUBDIVISION, DOUGLAS COUNTY,  
MINNESOTA, ACCORDING TO THE RECORDED PLAT ON FILE AND OF RECORD IN THE  
OFFICE OF THE COUNTY RECORDER, DOUGLAS COUNTY, MINNESOTA.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O.  
BOX 10304, DES MOINES, IA 503060304

Parcel ID Number:  
1104 WEST MEADOW LANE NW  
ALEXANDRIA  
("Property Address"):

which currently has the address of  
[Street]  
[City], Minnesota 56308 [Zip Code]

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Mildred Mattson

MEMORANDUM OF LAW

Debtor

Chapter 7, Case No. 04-60919  
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Wells Fargo Bank, N.A. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

**FACTS**

Movant holds a valid, perfected mortgage on real property owned by the Debtor. On the date of filing, the Debtor was delinquent under the note and mortgage. Since this case was filed Debtor has made no payments to Movant and the arrears total \$3,002.52.

**ARGUMENT**

1. Under Section 362.(d)(2) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." The Debtor in this case has failed to make payments required by the note and mortgage for a period of more than 4 months. Debtor has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re: Video East, Inc., 41 B.R. 176 (Bkrtcy. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrtcy. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtor has no equity and the property is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrtcy. D. N. H. 1983). In this case the balance due Movant is approximately \$84,400.00 and including the amount due the second



mortgage holder, the appoximate total amount encumbering the property is \$123,388.70. The value of the property is approximately \$136,900.00. Clearly, the Debtor has limited equity in the property and given typical selling costs, has no equity in the property. As this is a Chapter 7 case, the property is not necessary to an effective reorganization.

### **CONCLUSION**

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtor has no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: September 29, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo  
Paul A. Weingarden, #115356  
Brian H. Liebo #277654  
Attorney for Movant  
4500 Park Glen Road, #120  
Minneapolis, MN 55416  
(952) 925-6888

U.S. BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Mildred Mattson

Debtor

UNSWORN DECLARATION  
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-60919  
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Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 29, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Tamara L. Yon  
Chapter 7 Trustee  
P.O. Box 605  
Crookston, MN 56716

Brenda Velde  
Velde Law Firm LTD  
1118 Broadway  
Alexandria, MN 56308

Mildred Mattson  
1104 West Meadow Lane  
Alexandria, MN 56308

/E/ Erin Kay Buss  
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Mildred Mattson

ORDER

Debtor.

Chapter 7, Case No. 04-60919  
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The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., ("Movant"), pursuant to 11 U.S.C. Section 362 on October 26, 2004, at the U.S. Bankruptcy Court, Fergus Falls, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

Lot 3, Block 2, Second Addition to Tabbert's Subdivision, Douglas County,  
Minnesota

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this \_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Judge of the Bankruptcy Court